

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

4:00
2011 FEB 28 P 328

UNVERFERTH MFG. CO., INC.,
601 South Broad Street
Kalida, Ohio 45853

) Case No. 2 : 11 cv 0 184

Plaintiff,

) Judge JUDGE WALSON
v.)
Magistrate Judge MAGISTRATE JUDGE DEAVERS

CRUSTBUSTER/SPEED KING, INC.,
2300 East Trail Street
Dodge City, Kansas 67801,

Defendant.

COMPLAINT

Plaintiff, Unverferth Manufacturing Company, Inc. ("Unverferth"), by and through the undersigned counsel, hereby alleges as follows:

THE PARTIES

1. Plaintiff Unverferth is a corporation organized and existing under the laws of the State of Ohio having a principal place of business at 18107 U.S. Route 224, Kalida, Ohio 45853.
2. Upon information and belief, Defendant CrustBuster/Speed King, Inc. ("CrustBuster") is a corporation organized and existing under the laws of the State of Kansas having a principal place of business at Dodge City, Kansas, but is doing business in the State of Ohio.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a), and Article III of the Constitution.

4. This Court has personal jurisdiction over Defendant by virtue of, at a minimum, Defendant's ongoing presence and conduct in this judicial District, including, upon information and belief, the location of sales offices and the sale of CrustBuster products in this judicial district, in Fayette and Clinton Counties, Ohio.

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b), in that the Defendant has committed acts of infringement in Fayette and Clinton Counties, Ohio, and has sales offices in those counties.

NATURE OF THE ACTION

6. Unverferth is a leading manufacturer and marketer of a variety of farming equipment including spraying and tillage equipment, hay, manure and grain handling equipment, and agricultural dual and specialty changeover wheels. Unverferth is a family-owned, Ohio company, which has been serving America's farm operations since 1948.

7. Unverferth has a history of innovation, starting with the manufacture and marketing of dual and triple wheel systems and components. The impact of this innovation is evident today on over 90% of North American farms, and has since expanded into the world market. Another innovation by Unverferth is the loading and unloading seed tender. Unverferth's patented design not only allows it to fill planters and drills, but the seed tend can fill itself for safer and easier unloading of bulk bagged or boxed seed, or can be positioned 90 degrees to transfer seed from one container to another.

8. On March 30, 1999, the United States Patent and Trademark Office duly and properly issued the United States Patent No. 5,888,044 ("the '044 patent"), which is attached hereto as Exhibit A. The '044 patent is directed to Unverferth's innovative seed tender design.

9. Plaintiff Unverferth is, and has been since February 2001, the record assignee of the '044 patent.

10. Upon information and belief, the 330 Tender (the "Accused Product") includes a conveyor and support structure that allows the conveyor to be selectively swiveled at least 180 degrees about the outer end of a boom, thereby allowing both loading and unloading of the storage bin.

11. Accordingly, Plaintiff Unverferth brings this action for patent infringement of the '044 patent, under 35 U.S.C. § 271(a).

12. Plaintiff Unverferth has been harmed, and will continue to be harmed, by Defendant's infringing products. Plaintiff Unverferth sells one or more farm implements covered by at least claim 1 of the '044 patent and will lose profits and customer goodwill and be damaged by irreversible price erosion if Defendant is permitted to continue to manufacture, use, sell and/or offer for sale its infringing product(s).

13. It is in the interest of the public for the Court to enforce Plaintiff's patent rights.

INFRINGEMENT OF THE '044 PATENT

14. Plaintiffs repeat and reallege the allegations of Paragraphs 1 to 13 above, as if set forth herein.

15. Upon information and belief, Defendant has infringed and continues to infringe at least claim 1 of the '044 patent by making, using, offering for sale and/or selling infringing product(s), and will continue to do so unless enjoined by this Court.

16. Defendant's infringement of the '044 patent has damaged Plaintiff and will continue to cause Plaintiff substantial and irreparable harm unless enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment that:

A. the '044 patent is infringed by Defendant;

B. Defendant be preliminarily and permanently enjoined from manufacturing, using, selling and offering to sell the Accused Product, and any other infringing products, in the United States;

C. Defendant be permanently enjoined from manufacturing, using, selling and offering to sell the Accused Product, and any other infringing products, in the United States prior to expiration of the '044 patent;

D. Plaintiff be awarded damages adequate to compensate it for Defendant's infringement of the '044 patent including lost profits, but in an amount no less than a reasonable royalty; and

E. Plaintiff be awarded such further relief as the Court may deem just, necessary, and/or proper.

JURY DEMAND

Plaintiffs demand a trial by jury.

Respectfully submitted,



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